Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

The tenant filed an Application for Dispute Resolution (the "Application") on January 30, 2020 seeking a monetary order for the return of the security and pet deposits they paid at the start of a past tenancy. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on June 19, 2020. In the conference call hearing I explained the process and offered the parties the opportunity to ask questions.

The tenant attended the hearing, and they were provided the opportunity to present oral testimony and make submissions during the hearing. An agent for the landlord attended and had the chance to respond and make submissions on the landlord's behalf. Both parties confirmed they received the prepared evidence of the other.

Issue(s) to be Decided

Is the tenant entitled to an Order granting a refund of double the amount of the security deposit and pet damage deposit pursuant to section 38(1)(c) of the Act?

Is the tenant entitled to a monetary order for damage or compensation pursuant to section 67 of the *Act*?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all evidence and oral submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

Both the tenant and the landlord agreed to the terms of the tenancy agreement. The tenant submitted a copy of the agreement signed by both parties on October 2, 2014. The rent amount, not in dispute, was $1,468.00. The amount of the security deposit paid on October 2, 2014 was $734.00.

The tenant notified the landlord of their desire to move out at the end of November 2019 – this was for the end of tenancy date December 31, 2019. In the hearing the tenant stated they provided registered mail to the landlord on January 2, 2020 that had their forwarding address. They provided a copy of the Canada Post registered receipt to show the same.

The addendum to the tenancy agreement provides that the landlord leaves it to the outgoing and incoming tenants to meet and review the condition of the unit. Their instruction to the incoming tenants is if they are not satisfied with the condition of the unit then they should not receive the key from the outgoing tenant. Also stated in the addendum: “remember to contact the landlord so [they] can check if all is well with the new tenant before [they give] you your security deposit back”.

The tenant claims the landlord did not return the security deposit within 15 days of move out and did not file for dispute resolution. The tenant here requests double that amount in line with the *Act*.

The tenant provided a separate submission setting out their interpretation of the legislation on the dispensation of the security deposit. They point to the provisions of the *Act* that set out the landlord’s duty to conduct a move-in inspection and a move-out inspection. They also state: “. . . the landlord failed to file for dispute resolution within 15 days of the end of the tenancy and/or receipt of the tenant’s forwarding address (both Dec 31, 2019).”

The landlord provided a detailed statement in their prepared evidence prior to the hearing. They set out expenses for clean-up costs after the end of the tenancy. In the hearing, the landlord’s agent submitted that the landlord “waives their right to claim damage” against the security deposit. This is because of the landlord’s lack of unit

inspection meetings at the start and end of tenancy. Additionally, the landlord's agent stated they did not dispute anything stated by the tenant about their entitlement to the security deposit.

The tenant also claims $5,435.00 on their Application. They completed a monetary worksheet on January 17, 2020 that shows the cable television amount of $2,170.00 and garbage disposal amount of $3,265.00. The tenant highlighted a portion of the tenancy agreement to show "what is included in the rent". This indicates "cablevision" and "garbage collection" though a notation for each by the tenant is "cable television never provided" and "garbage collection never provided." This is the essence of the tenant's claim for compensation.

For the cable TV issue, they state when they moved in, this was included in the rent though the set-up was that the cable was "split" – that is, one cable account was shared among more than one unit. This is confirmed in a written account by the landlord in the evidence.

By 2010, cable service went digital and then the service required a "descrambler" device. The tenant provides that they raised this with the landlord and the landlord's response was that the situation was not the same. The amount of $2,170.00 is the tenant "estimating" and is a "minimum" of the cost they incurred at $35.00 per month for a 62-month period, the duration of the tenancy agreement. Additionally, they submitted a statement of account and credit card statements that show payments they made for cable service in 2015 for the total amount of $670.75.

The landlord presents they have no dispute on this particular claim; however, they raised the point that the discussion between the landlord and tenant was that a new connection of cable could entail a rent increase, and the landlord did not increase the rent over the 10 year total tenancy period.

The tenant claims an amount of $3,265.00 for issues about the condition of the garbage collection bin and their part in cleaning up that area. The garbage and recycling were handled by the city. This is the cost they present for a larger garbage bin with independent collection bi-weekly. The need for clean up was an ongoing occurrence, and the tenant provided emails of communication on the issue with the landlord, photos, and their breakdown of the cost for a replacement service over the previous 62 months.

The landlord's agent spoke only to the pictures provided to state that an issue with city garbage collection would have been dealt with in proper fashion by the landlord.

Analysis

The *Act* section 38(1) states that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing, the landlord must repay any security or pet damage deposit to the tenant or make an Application for Dispute Resolution for a claim against any deposit.

Further, section 38(6) of the *Act* provides that if a landlord does not comply with subsection (1), a landlord must pay the tenant double the amount of the security and pet damage deposit.

The total of the deposit is $734.00. The landlord takes no issue with this amount and does not dispute the tenant's submissions on their right to repayment of the security deposit. Moreover, their agent acknowledged that the landlord waived any right to claim for damage against the deposits where the specific instruction regarding inspection in the addendum runs counter to what is provided for regarding condition inspections and reports in the *Act*.

Even though the landlord presents monetary loss for cleaning duties because of the tenant, this hearing is not to determine the landlord's right to claim against the deposit. They did not file a claim on the amounts they specified in their response to the tenant and I give that no consideration. Rather, my determination shall be whether the landlord did what is required by the *Act* in relation to the disposition of the security deposit at the end of the tenancy.

I accept that the landlord had the tenant's forwarding address by the time the tenancy ended. The landlord did not apply for dispute resolution within 15 days of either the end of tenancy or receiving the tenant's forwarding address. I find there was no agreement that the landlord could retain any amount of the security deposit or pet damage deposit.

The landlord's actions are a breach of the *Act*. The landlord must pay the tenant double the amount of the security deposit. This amount is $734.00. As per section 38(6) of the *Act*, the landlord must pay the tenant double this amount: $1,468.00.

Under section 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to section 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

A damage can be quantified by its impact and can include the loss of a service or facility provided under a tenancy agreement. Essentially this would mean a party to the tenancy agreement had failed to comply with the terms therein.

On the issue of the landlord's provision of cable television, this item is specifically included in the rent as stated in the tenancy agreement. The tenant's submission is that this was not provided for the duration of this tenancy agreement from 2014 onwards.

When considering the criteria listed above, I find the damage or loss is not established clearly on what the tenant provided here. The tenant did not present why the lack of cable television imposed a difficulty for them; however, I understand their position here is that they were paying for something that was not provided.

In direct response to the tenant's claim for compensation on this point, the landlord's written response raises points relevant to the question of the provision of cable television. The landlord stated that by approximately 2013 other property residents stated to him they did not want cable television and they were opting for this service by way of internet. They stated that in other properties they paid for cable tv and internet to be helpful, except this one. Moreover, they presented that they did not raise the rent in the unit for approximately ten years.

On my review, the tenancy agreement has internet service included as part of the rent. The tenant did not object to this in the hearing and did not specify by notation on the agreement that this was not the case. They did not present that they were paying for internet separately for the duration of the tenancy; therefore, I take it to be the case that it is more likely than not that internet was provided by the landlord, as they stated it was in other buildings they managed. Different from those buildings is that here other residents in this property opted for no cable television.

The tenant presented that they paid for separate cable service for a time in 2015. They did not specify what changed after September when they cancelled this service. They

did not provide evidence to show what other established service they had in place to either replace the cable tv service, or substitute for it. They also did not show that they paid for internet on their own.

Based on this, I find the estimate for $2,170 is not established as a value for damage or loss. I understand this is an effort at minimizing, by factoring in the lowest package price into the estimate; however, I weigh this against the need for cable television and the impact its absence had and also consider that, more likely than not, the landlord provided internet.

In sum, I find the tenant here does not establish that loss existed. The landlord did not raise the rent, and I find on a balance of probabilities that the provision of cable tv at some point entered that discussion. After September 2015, the tenant does not specify that they made other arrangements for cable tv on their own -- based on this I am not satisfied its absence posed difficulty to the tenant.

I make no award for the tenant's estimate cost amount of $2,170.00.

The tenant did not specify the separate amount of $680.75 paid as a separate claim for compensation; however, I consider this cost in the alternative to the estimated amount I considered above. It represents actual amounts paid by the tenant. To consider compensation for this amount, I find the tenant did not explain why the time period from January to September 2015 was one where they had to obtain this service. The account summary shows a balance of $163.40 carried over; however, the tenant is specifying this timeframe in 2015 only to show what they paid, and the origin of the carried-over balance is not stated. Similarly, there is no explanation of what happened before and after this time period and if another alternative arose after September 2015. In sum, I find this is not a damage or loss that arose from a violation of the *Act* or the tenancy agreement and I make no award for this amount in the alternative.

On the issue of garbage, the tenancy agreement also specifies that its collection is included. The tenant raised issues about sorting, and the inadequate size of the garbage bin to catch everything from the property. Their claim is for a much larger bin to the cost of $3,265.00 over 62 months.

On this portion, I am not satisfied of the damage or loss to the tenant. The problem with garbage was not presented with a description of the frequency of its occurrence. The messages which the tenant provided appear to be cooperative and open with the landlord. There is no record of the tenant raising this concern with the landlord earlier, and not in terms of a lack of a service provided. One message suggests the tenant took on the responsibility of garbage maintenance on behalf of the sub-tenants.

In sum, there is no evidence they had proposed a new system to the landlord previously at this expense. While the garbage required ongoing maintenance and presented a flowing together of recycling rules, proper bin size and condition, and the requirement for separate clean-up, I find it was not a significant cost borne by the tenant. Ultimately the landlord bears the responsibility for the issue; however, the tenant does not show that they discussed the nature of the problem or an alternate solution in the past. I find this does not match up with a claim for a much larger bin and more frequent service, with the claim being made after the end of the tenancy.

From this consideration, I dismiss this portion of the tenant's claim.

For the reasons outlined above, I find the tenant has not presented a preponderance of evidence to show on a balance of probabilities that they are entitled to compensation for damages or loss that is the responsibility of the landlord.

Because the tenant was successful in their claim for the security deposit amount, I grant them reimbursement of the $100.00 application filing fee for this hearing process.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the tenant a Monetary Order in the amount of $1,568.00, for double the amount of the security deposit and the application filing fee. The tenant is provided with this Order in the above terms and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 6, 2020

Residential Tenancy Branch